

Internal Revenue Service  
Director, Exempt Organizations

Department of the Treasury  
P.O. Box 2508 - Room 6417  
Cincinnati, OH 45201

Date: SEP 07 2001

Employer Identification Number:  
[REDACTED]

Person to Contact - I.D. Number:  
[REDACTED]

Contact Telephone Numbers:

[REDACTED] Phone

[REDACTED] FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(6) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

*Steven Miller*

Director, Exempt Organizations

Enclosures: 3

The information submitted indicates that you were incorporated [REDACTED]

[REDACTED]

Your articles of incorporation state as its purposes, in part: the particular purposes of the corporation are to provide benefits and education to its members.

You stated in application Form 1024 when describing the organization's activities, in part, the following: the organization contracts with service providers to provide necessary services to its members such as multi-listing service, monthly home publication and lockbox key service.

The application also stated, in part, that the organization provides the following services to its members: Multi-listing service-Allows members access to all properties listed for sale by all members. The cost of this service is included in members' dues. Monthly "[REDACTED]" publication- This is a monthly magazine with pictures and descriptions of all properties for sale by all members. It is grouped by member offices. Lockbox and key service- A lockbox and/or key is provided to enable access to listed properties by any member. The service is included in members' dues.

In responding to our request for additional information, you stated the Board promotes the common business interest of its members and its activities are directed to the improvement of business conditions for its members, in part, in the following ways: By providing the multi-list service for member realtors, making it possible to show and sell properties listed by other realtors. By publishing the monthly "[REDACTED]" magazine and providing potential homebuyers with details of listed properties for sale in the area. By providing the keys and lock boxes for listed homes, making it easier for members to have access to listed properties for showings.

Your bylaws state, in part, that the [REDACTED] shall maintain for the use of its Members Multiple Listing Service which shall be subject to the Bylaws of the [REDACTED] and such rules and regulations as may be hereinafter adopted. It also says, in part, that a Multiple Listing Service is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law); by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; by which Participants engaging in real estate appraisal contribute to common data bases; and is a facility to the orderly correlation and dissemination of listing information among the Participants so that they may better serve their clients and the public. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of the sale (or lease).

Your income is derived from advertising fees for the monthly "[REDACTED]" magazine, and from Membership dues, which includes lockbox and key rentals and the Multiple Listing service.

Section 501(c)(6) of the Internal Revenue Code provides for exemption from Federal income tax for persons having some common business interest, the purpose of which is to promote such common interest. It is not to be organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6) of the Income Tax Regulations provides, in part, as follows: A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league.

In Revenue Ruling 59-234 advice was requested as to whether the operation of a multiple listing system by an otherwise exempt real estate board will cause it to be denied exemption from Federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code of 1954. It states, in part, that "It is apparent that the multiple listing system as operated by real estate boards is inherently designed for the rendering of particular services for individual members as a convenience and economy in the conduct of their respective businesses. Therefore, the instant organization, instead of primarily engaging in activities for the improvement of business conditions within the real estate business generally, is performing particular services for its members through the maintenance and operation of its multiple listing system by providing them with listings of properties for sale, which serve them as a convenience and economy on the conduct of their business. It is further concluded that the operation of a real estate multiple listing service constitutes a business of a kind ordinarily carried on for profit."

In *MIB, Inc. v. Comm.*, 734 F. 2d 71 (1<sup>st</sup> Cir. 1984), the court determined that the second part of the key sentence--"as distinguished from the performance of particular services for individual persons"--is a definite limitation upon the first part of the sentence ("Its activities should be directed to the improvement of business conditions of one or more lines of business..."). The court noted that a business league must not only improve the conditions of a line of business, but must do so in a way different from simply supplying products or services to its individual members.

The court case also raises the question as to whether the association's activities advance the members' interests generally, by virtue of their membership in the industry, or whether they assist members in the pursuit of their individual businesses.

On appeal the court found that MIB's information exchange, developed around responding to individual member requests for data relevant to applicants seeking to buy insurance from that member, is a service that helps the member decide whether or not to sell insurance to the applicant. It is a service that clearly has commercial benefit to the individual member. The court indicated that while it may also confer a general benefit upon all members and act in the collective interest as a deterrent, the services are "particular services for individual persons".

Based on the information submitted, we have determined that you have not met your burden of proof to show that you are operated for an exempt purpose, and that an integral part of your activities are provision of services. Services provided include lockbox and key service, monthly "[REDACTED]" publication providing listing and pictures of properties for sale, and the Multiple Listing

service, ones that are normally associated with the operation of a real estate business. By providing these services the organization is engaged in "business of a kind ordinarily carried on for profit" within the meaning of Regulation 1.501(c)(6)-1. In addition, a substantial amount of the organization's income is derived from these recurring activities.

You have not established that the organization qualifies for exemption.

Therefore, we have concluded that you do not qualify for exemption from Federal income tax as an organization described in section 501(c)(6) of the Code.

Department of the Treasury - Internal Revenue Service  
Consent to Proposed Adverse Action  
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number  
[REDACTED]

Date of Proposed Adverse Action Letter

SEP 07 2001

Name and Address of Organization  
[REDACTED]  
[REDACTED]  
[REDACTED]

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective

☐ Modification of exemption from section 501(c)( ) to section 501 ( ), effective

☐ Classification as a private foundation described in section 509(a)), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)( ), effective

☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:  
[REDACTED]

Signature and Title

Date

Signature and Title

Date